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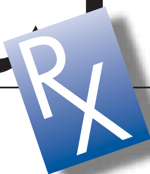

Volume 15, No. 2 Fall/Winter 2007

A Letter from the Chair of the Board

Dear Colleague:

The focus of this newsletter revolves around the issue of patient referral and the ramifications for both the referring Physician and the specialist. Of importance is the communication between Physicians and the necessity of proper follow-up, so that the question is readily answered: "Whose patient is this, anyway?"

George S. Malouf, Jr., M.D.
Chair of the Board
Medical Mutual Liability Insurance Society of Maryland
Professionals Advocate Insurance Company

Consultation and Transfer of Care: Avoiding the Risks

It is a basic tenet of Tort law that Physicians are obligated to diagnose and treat their patients' illnesses or injuries within the appropriate standard of care. Physicians who fail to act within that standard, and who cause injury to their patients by such deviation, may be held liable for negligence. Physicians can request help with patient management challenges through one of two options – either consultation or transfer of care. Primary care Physicians may need to rethink the concept of referral and, instead, start thinking in terms of Consultation Requests or Transfer of Care.[1]

The first option is Consultation, which is a request for advice, an opinion, a recommendation, a suggestion, some direction or counsel. In this instance the requesting Physician is seeking expertise in a specific medical area which may be beyond his or her knowledge. However, her or she maintains responsibility for the patient's care.

Example: The primary care Physician can treat the patient for most things but sends the patient to a cardiologist for a stress test and recommendations for medical management which the primary care Doctor will treat.

The second option is a Transfer of Care in which the asking Physician requests another Physician take over responsibility for the complete management of the patient's condition and the requesting Physician does not expect to care or treat that condition.

Continued on next page

James W. Saxton, Esq. and
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Example: The primary care Physician can treat the patient for most things, but sends the patient to a pulmonologist for complete care of the lung infection.

These issues often arise in cases where it is clear that the standard of care required a Physician to seek assistance for the patient from another treating Physician or specialist because the Physician knows or should have known that her or she could not appropriately manage the patient's condition without assistance of either a consultation or transfer of care.

Inherent in the Physician's duty to consult or transfer care is the requirement that the Physician recognize the limitations of his or her knowledge and ability and the equipment and facilities available to him or her. The Physician must evaluate his or her own skills in light of the patient's condition. Potentially serious clinical findings should be closely monitored so that the Physician can seek early assistance and effect a timely remedy.

Periodically, especially with patients who have long-standing disease issues, the primary Physician should reassess whether a patient is responding favorably to the plan of care. This is especially true whenever the benefits of a consultation or transfer of care will be lost, if the injury or illness is not treated within a certain period of time.

When a Physician is unable to arrive at a working diagnosis, or the patient is not responding favorably to the plan of care, her or she should seek help. If a Physician fails to seek timely assistance in such a situation, and it can be clearly demonstrated that misdiagnosis would have been prevented if a specialist had been presented with the patient's clinical picture, the Physician may be held liable for negligence. A Physician also has a duty to request consultation or transfer of care to another Physician, when treating conditions and matters of admitted unfamiliarity and when the treatment of an injury or illness is known to be, or should be known to be, complex and fraught with complications strongly suggesting the need for specialized care.

Case Example:

For example, a family practitioner was found negligent for attempting to treat a comminuted supracondylar fracture of the humerus with epiphyseal displacement. An orthopedic surgeon testified for the plaintiff that this injury required a major orthopedic procedure and that the standard of practice dictated that a family practitioner consult with an orthopedic surgeon before attempting to set such a fracture [Morgan v. Engles, 372 Mich. 514, 127 N.W.2d 382 (1964)]. Files of defense lawyers are filled with such cases. Failure to request a consultation or transfer of care to a cardiologist, or to a plastic surgeon, and the list goes on and on.

Consults and Transfer of Care – Risks

Consultation and transfer of care are essential components of the practice of medicine and can be viewed as an example of a "hand-off of care" as described by the National Patient Safety Foundation and is one of the Joint Commission of Healthcare Organizations (JCAHO) Safety Requirements. As such they are regarded as opportunities to "drop the ball" which can result in patient harm and possible litigation. Once the request is made, the standard of care requires effective communication between specialist Physician and requesting Physicians so that nothing is lost in the transition. At the very least, the requesting Physician should communicate with the specialist and review the patient's condition when requesting help. The specialist Physician should send the PCP periodic updates about the patient's progress when there has been a transfer of care for a special condition.

At times, each Physician may think the other is treating the patient when, in fact, neither Physician is caring for the patient because the patient may not have followed through on the specialist appointment or instructions. In the view of the courts and often a jury, both Physicians have "dropped the ball." Should the patient's condition deteriorate during the interim, both Physicians will likely be cited for failure to follow through on advising the patient of the risks of not getting the treatment recommended. The court's view is that the patient may not understand the risks of not complying and therefore, the Physician has a duty to make sure the patient understands what the risks of not getting needed treatment may mean for their future health or well being.

The primary Physician who requests help from another Physician or other provider is expected to effectively coordinate the ongoing care of the patient. To avoid any conflicts in treatment decisions, the patient, requesting Physician and specialist should clearly decide who is in charge of the case and assure that the patient agrees with this decision. The decision to consult should be documented in the patient's medical record as part of the plan of care and the specialist should clearly document in his records the expected role he is asked to play.

Consults and transfer of care are often alleged in medical malpractice cases as the cause of a missed or delayed diagnosis stemming from a miscommunication, misunderstanding or delay or failure to treat. Too often, a consultant Physician is named in a case simply on the basis of a one-time patient visit without adequate follow-up with the requesting Physician. These interactions can and should be managed to avoid this risk.

Risk Management Strategies to Reduce the Risk of Consults and Transfer of Care

Requesting Physician: When you are the attending Physician requesting a consultation or transfer of care you should have in place in your practice a process or guidelines for consultations and transfer of care that include the following components:

- The attending Physician will discuss with the patient the need for consultation or transfer of care and assure that the patient has indicated his or her understanding and agreement. Document this decision in the patient's medical record as a part of the Plan of Care.[1]

- The requesting Physician communicates in writing the reason for the consultation or transfer of care to the specialist along with relevant clinical information.

- The requesting Physician should indicate a reasonable time in which her or she would like to receive feedback from the specialist.

  A July 1994 study by the Northeastern Ohio University College of Medicine concluded: Primary care Physicians can influence the likelihood of receiving feedback from a consultant by initiating communication with the consultant. Although this study is from the mid-90s, the results are still true today.

- The requesting Physician's office should make a request to the consultant's office staff to be informed if the patient does not follow through with the expected consultation so that they can re-contact the patient to determine why the patient has not followed through and to advise the patient of the risks attendant to not following the plan of care. This discussion should always be documented in the patient's medical record.

- The requesting Physician should have in place a tracking process to verify that the patient was seen by the specialist Physician through receipt of some form of direct feedback from the specialist (letter or telephone call) to assure that the order was completed.

  The July 1994 Research study at Northeastern Ohio University College of Medicine concluded that family Physicians reported that 65% of patients had visited the consultant, 14% had not and the family Physician had no knowledge of the actions taken by the other 23%.[5]

- Should you, as the requesting Physician decide, based on your professional judgment, not to follow the recommendations of the specialist, it is important that you clearly document your rationale and thought processes about the reasons you have chosen an alternative plan of care in the patient's medical record. A prudent action may be to request a second opinion from another specialist to compare.

CME Evaluation Form

Statement of Educational Purpose

"Doctors RX" is a newsletter sent twice each year to the Insured Physicians of MEDICAL MUTUAL/Professionals Advocate. Its mission and educational purpose is to identify current health care related risk management issues and provide Physicians with educational information that will enable them to reduce their malpractice liability risk.

Readers of the newsletter should be able to obtain the following educational objectives:
1) gain information on topics of particular importance to them as Physicians,
2) assess the newsletter's value to them as practicing Physicians, and
3) assess how this information may influence their own practices.

CME Objectives for "*Consultation and Transfer of Care: Avoiding the Risks*"

Educational Objectives: Participants should be able to:
1) Describe the concepts of consultation and transfer of care
2) Understand the liability issues behind both concepts
3) Describe risk management stratigies to reduce the inherent risks to consultation and transfer of care requests

Part I. Educational Value:	Strongly Agree 5	4	3	2	Strongly Disagree 1
I learned something new that was important.	❑	❑	❑	❑	❑
I verified some important information.	❑	❑	❑	❑	❑
I plan to seek more information on this topic.	❑	❑	❑	❑	❑
This information is likely to have an impact on my practice.	❑	❑	❑	❑	❑

Part 2. Commitment to Change: What change(s) (if any) do you plan to make in your practice as a result of reading this newsletter?

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Part 3. Statement of Completion: I attest to having completed the CME activity.

Signature: ______________________ Date: ______________

Part 4. Identifying Information: Please PRINT legibly or type the following:

Name: ______________________ Telephone Number: ______________

Address: ____

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CME Test Questions

Instructions for CME Participation

CME Accreditation Statement — MEDICAL MUTUAL Liability Insurance Society of Maryland, which is affiliated with the Professionals Advocate Insurance Company, is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for Physicians. MEDICAL MUTUAL designates this educational activity for a maximum of 1.0 AMA PRA *Category 1 Credits*™. Physicians should only claim credit commensurate with the extent of their participation in the activity.

Instructions—to receive credit, please follow these steps:

1. Read the articles contained in the newsletter and then answer the test questions.
2. Mail or fax your completed answers for grading:

   Med•Lantic Management Services, Inc. Fax: 410-785-2631
   225 International Circle
   P.O. Box 8016
   Hunt Valley, Maryland 21030
   Attention: Risk Management Services Dept.

3. One of our goals is to assess the continuing educational needs of our readers so we may enhance the educational effectiveness of the Doctors RX. To achieve this goal, we need your help. You must complete the CME evaluation form to receive credit.
4. Completion Deadline: March14, 2008.
5. Upon completion of the test and evaluation form, a certificate of credit will be mailed to you. Please allow three weeks to receive your certificate.

1. The standard of care under Tort law requires that a Physician seek assistance for a patient when the Physician knows or should have known that her or she could not appropriately manage the patients condition.

   A. True B. False

2. A Consultation is a request for advice, an opinion, a recommendation, direction or counsel that a Physician may seek where the requesting Physician still maintains responsibility for the patient's care.

   A. True B. False

3. The requesting Physician is not liable for negligence if her or she delays in seeking assistance and it can be clearly demonstrated that the delay or misdiagnosis would have been prevented if a specialist had been consulted.

   A. True B. False

4. An option for seeking assistance is Transfer Of Care which is when a requesting Physician requests another Physician take over responsibility for the complete management of the patient's condition and the requesting Physician does not expect to care or treat that condition.

   A. True B. False

5. The specialist who receives a request from a primary Physician is expected to communicate any critical or time sensitive findings as soon as possible to the requesting Physician.

   A. True B. False

6. The requesting Physician should have in place a process to ask the specialist Physician's office to notify him or her if the patient does not follow through on the expected consultation to avoid an allegation that "the ball was dropped."

   A. True B. False

7. The specialist Physician's office should have a process in place to contact patients who "do not show" for a consultation to reschedule and to notify the requesting Physician's office and to document this call.

   A. True B. False

8. Requesting Physician's office should have a tracking process in place to verify that all orders for diagnostic testing and consultations have been completed.

   A. True B. False

9. The specialist Physician does not need to send a letter to the requesting Physician when the consultation is completed to clearly define that her or she is signing off the case and returning management of the patient to the requesting Physician.

   A. True B. False

10. The most important element in consultations and transfer of care is communication between Physicians – both formal and informal.

    A. True B. False

• Long waits and delays between the primary care visit and the specialty care visit are confusing for patients and worrisome to Physicians. Patients often do not understand why the wait is so long and thus this leads to frequent telephone calls to the primary care Physicians office.

Risks can be minimized if primary Physicians develop a network of specialists that you are comfortable sending your patients to and be as specific as possible in your requests for assistance. Help specialists be more thorough and timely in communicating their findings.

Try to schedule the consultant appointment or transfer of care appointment before the patient leaves the primary care Physician's office. Most specialists will schedule patients from your office quicker than if thepatient makes the appointment call themselves.

If there will be a long delay before the specialist can see the patient, a plan of care must be determined for the patient so that her or she understands that in the interim, the primary care provider will be available should any symptoms arise or worsen. The PCP may want to check with the specialist to determine if any tests or interim treatment should be administered until the specialist can see the patient.

Specialist Physician:

When you are the specialist Physician receiving a request for a consultation or transfer of care you should have in place in your practice a process or guidelines for consultations or transfer of care that include the following components:

• Scheduling guidelines to accommodate urgent requests for consultation or transfer of care.

• A "no show" policy that requires your office staff to contact a patient who does not keep an appointment to try to reschedule.

• Should a patient refuse to reschedule or does not keep a rescheduled appointment for a consultation, your office staff should inform the requesting Physician's office that the patient did not follow through. This notification should be documented in the medical record or if a medical record was not opened, in a log or file that is maintained for a period of at least two years beyond the state statute of limitations where the practice is located.

For Maryland, the statute of limitation for medical malpractice actions requires that the action must be commenced within five years from the date of the act or omission giving rise to injury, or within three years of its discovery, whichever period is shorter.

For Washington, D.C. an action for professional negligence, including medical malpractice lawsuits, must be filed within three years.

In Virginia, most medical malpractice actions must be commenced within two years of the date of the act or omission giving rise to the claim. For medical malpractice actions involving the presence of a foreign object inside the body, any claim must be filed within one year from the date the object was or reasonably should have been discovered, but no such action may be filed more than ten years after the date the object was inserted.

- The specialist Physician should document clearly in the patient's medical record what his or her understanding is of the scope of the consultation request.

- Once the specialist has evaluated the patient's condition, he or she communicates (preferably in writing) the findings and recommendations to the requesting Physician.

- Should there be critical findings or time sensitive issues from the examination, the specialist should personally report these to the requesting Physician as soon as possible prior to sending a written report.

Cases have been reported where a consulting Physician had information that might have prevented injury had it been communicated to the treating/referring Physician in a timely manner. Although most reports can be processed through normal channels, those which are adverse should be evaluated to determine if immediate notification of the treating or attending Physician is appropriate.

- If ongoing treatment is indicated, the specialist Physician should keep the requesting Physician fully informed concerning the patient's course of treatment.

- This can easily be accomplished by dictating periodic letters to the referring Physician detailing the patients treatment and progress.[1]

- When the consult is concluded, the specialist Physician should send a letter to the requesting Physician in which her or she clearly signs off the case and relinquishes total control of the patient's care to the requesting Physician.

Summary:

Consultations and Transfers of Care are inherently good medical practice when you, as a treating Physician, realize that you are in a situation beyond your area of expertise. If you fail to consult and elect to treat yourself and something goes wrong, you could be sued for failure to diagnose or delay in diagnosing or failure to meet the standard of care. For example, The Maryland Pattern Jury Instruction reads as follows: "A health care provider is negligent if the health care provider does not use that degree of care and skill which a reasonably competent health care provider, engaged in a similar practice and acting in similar circumstances would use." In other words, if you undertake to do something, you must do it well.

If the requesting Physician and specialist Physician fail in their efforts to communicate findings and the delay or lapse in communication causes harm to a patient, both Physicians could likely be named in a lawsuit.

Should you as the primary Physician fail to request assistance when faced with a challenging case beyond your expertise or fail to recognize when a patient is not responding to your plan of care and the patient is harmed, you could likely find yourself in court defending your care.

In court you may be held to the standard of care of an orthopaedist, cardiologist, or other specialist because you failed to ask for assistance. Timely recognition of the need to consult or transfer care should be discussed with your patient, documented clearly in the medical records and carried out according to the standard of care processes you have in place in your practice. Enhancing formal and informal channels of communication[8] between requesting Physician and specialists optimizes appropriate and effective patient care and reduces the risk of liability.

Footnotes

1. Risk management Principles & Commentaries for the Medical Office. 2nd Edition, American Medical Association, 1995.

2. Quinley, Kevin M. CPCU, ARM "Bulletproofing Your Medical Practice," SEAK Inc, 2000.

3. Journal of Family Practice: "Referral and consultation in primary care: do we understand what we're doing?" - Editorial August 20, 2007.

4. Rice, Berkeley, "Protect yourself When You Refer" Medical Economics. August 8, 2007.

5. The Northeastern Ohio University College of Medicine Study of 309 of 5,172 total patients who were referred (5.97 per 100 office visits). July 1994.6.

6. Murray, Mark, MD. "Reducing waits and delays in the referral process" Family Practice Management, August 23, 2007.

7. Donohoe, Martin T. M.D., Richard L. Kravitz, M.D., David B. Wheeler, Ph.D., Ravi Chandra, M.D., Alice Chen, M.D., Natasha Humphries, B.S. "Reasons for Outpatient Referrals from Generalists to Specialists" J Gen Intern Med 1999; 14 :281-286.

8. Centers for Medicare and Medicaid (CMS) LCD C- 2 J Consultations Revisions effective date 03/13/2007

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Mr. Saxon is an attorney for Stevens & Lee, Lancaster, Pennsylvania, where he is Co-Chair of the Health Care Department and Chair of the firm's Health Care Litigation Group. For over 25 years, he has been an active trial lawyer representing providers, including hospitals, Physicians and retirement communities in state and federal courts and administrative proceedings and uses his extensive experience as a litigator to advise health care providers throughout the United States in connection with understanding and reducing their professional liability risk. He is the immediate past chair of the American Health Lawyers Association's Healthcare Liability and Litigation Group. Mr. Saxton speaks nationally on health care and risk management issues and has published numerous articles and textbooks on the same.

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Doctors RX

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